IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : R.S.A.No.666 of 2005

Date of Decision : October 09, 2006.

Suresh Kumar ..... Appellant

Vs.

The Registrar Co-op. Societies
Punjab, Chandigarh and others ..... Respondents

Coram : Hon'ble Mr.Justice P.S.Patwalia

* * *

Present : Mr.Anish Setia, Advocate
for the appellant.

None for the respondents.

* * *

P.S.Patwalia, J. :

The plaintiff has filed the present Regular Second Appeal aggrieved against judgment of the lower appellate court dismissing the suit filed by him.

The plaintiff had filed a suit for declaration to the effect that he is entitled to the grant of scale of Rs.1200-2100 from the date he entered into Markfed and is further entitled to be designated as Field Officer and granted scale of Rs.1800-3200 which was subsequently revised to Rs.5800-

9200. He also prayed for arrears as a result of grant of aforementioned pay scales. It was his contention that he was working as a Salesman in the District Whole Sales Co-operative Supply and Marketing Society Limited, Ferozepur and after the merger of the said society in Markfed he was taken on the establishment of Markfed vide letter dated 28.6.1993 and he joined as such on 1.7.1993. At that time he was drawing salary in the scale of Rs.1200-2100 which, according to him, should have been protected. It is his further case that all salesmen in Markfed had been re-designated as Field Officers Grade II vide order dated 18.12.1992 and thereafter the Field Officers Grade II were merged in the cadre of Field Officers on 25.7.1997 and were subsequently granted the scale of Rs.1800-3200 which was subsequently revised to Rs.5800-9200. On the other hand on his absorption into Markfed the plaintiff was wrongly granted the scale of Rs.950-1800 and was not re-designated as Field Officer Grade II, Field Officer nor the pay scale attached with the aforesaid posts was given to the plaintiff.

In reply the defendants appeared and took stand that the plaintiff had in fact been appointed as a salesman on a particular pay scale, which, on appointment, was accepted by him. He had never been designated as Field Officer Grade II or Field Officer and hence was not entitled to pay scale attached with those posts.

The trial court after examining the evidence held that the defendant Markfed was totally silent as to why the aforestated designations/pay scales could not be granted to the plaintiff. It was however also observed by the trial court that the plaintiff had not succeeded in producing evidence to show that any employee of his parent society taken on the establishment of Markfed in 1992 had been granted the aforesaid

designation/pay scale. However so as to not cause any prejudice to the claim of the plaintiff the trial court directed the defendants to pass a speaking order on the claim of the plaintiff within a fixed period. The relevant observations of the trial court are as hereunder :-

> *"The plaintiff has claimed the above stated designation of the Field Officer and the above stated scales, but in the instant suit also the defendants have not disclosed any reason for denial of this designation/scale to the plaintiff. Through the written statement as well as statement made by DW1 Tarlok Chand Verma who appeared on behalf of the defendants, the claim of the plaintiff has been simply denied by the defendants. Even upon representation dated 20.10.1999 filed by the plaintiff with the defendants as well as legal notice dated 6.3.2000 served by the plaintiff upon the defendants no action was taken. The defendants are totally silent as to why the above stated designation/scale was not granted to the plaintiff. Although plaintiff is claiming the above stated designation/scale on the ground that the other employees who were taken on establishment of the Markfed on the same ground were granted this designation/scale, but he did not adduce any evidence showing that any employee of his parent society taken on the establishment of the Markfed*

in the year 1992 has been granted above stated designation/scale of the Field Officer. So, at this stage, it cannot be held that plaintiff is entitled to the above stated designation/scale of the Field Officer as alleged. However, the defendants are required to pass speaking order with respect to the above stated claim of designation/scale of the plaintiff made through his representation dated 20.10.1999 and legal notice dated 6.3.2000. Therefore the plaintiff is entitled to the decree to the effect that his claim made through his representation, legal notice as well as the present suit be considered by the defendants within a fixed period and if the plaintiff is found entitled to the designation/scale of the Field Officer, then the same be granted to him without any delay. In view of these observations, issue No.1 is decided partly in favour of the plaintiff. If the plaintiff is found entitled to the above stated designation/scale of the Field Officer, then he be granted arrears of pay and other benefits, under rules. Hence, issue No.2 is also decided accordingly in favour of the plaintiff partly."

The plaintiff aggrieved against these directions filed an appeal before the learned Additional District Judge, Ferozepur. The learned Additional District Judge while considering the appeal also found that the

plaintiff had not led any evidence on the file to show that he was entitled to be designated as Field Officer. It was further found that earlier order designating all salesmen as Field Officers Grade II would not apply to the plaintiff as it had been made prior to the joining of the plaintiff. It was also found that once the plaintiff had accepted his appointment in the scale of Rs.950-1800 he could not be granted any relief. The suit of the plaintiff was also found to be time barred as the plaintiff was appointed in 1993 and the suit was filed in August 2000. The lower appellate court further held that the representation which the plaintiff had filed was not a statutory representation and therefore no direction had been issued by the trial court to decide the same.

On the aforesaid findings the lower appellate court not only dismissed the appeal filed by the plaintiff but also set aside the relief granted by the trial court of passing the speaking order on the representation and dismissed the suit filed by the plaintiff in totality.

Learned counsel for the appellant before me has only raised a solitary argument to the effect that even if the lower appellate court had not found any merit in the appeal filed by the plaintiff, in the absence of cross-objections, the appeal could have been dismissed but the limited relief granted to the appellant by the trial court could not have been declined by modifying the judgment of the trial court to the prejudice of the appellant in an appeal filed by the appellant. He therefore prayed that this Regular Second Appeal should be accepted and the judgment of the trial court should be restored and the respondents should be directed to pass a speaking order on his representation as directed by the trial court.

A reading of the judgment of lower appellate court also shows

that lower appellate court found that the plaintiff did not lead evidence on the file to show that he was entitled to be designated as Field Officer or was entitled to the scale of Rs.1800-3200. The relevant observations of the lower appellate court are as hereunder :-

> *"As such, plaintiff has not led any evidence on the file to show that he was entitled to be designated as Field Officer or was entitled to grant of scale of Rs.1800-3200 when he was taken over by the Markfed."*

In this view of the matter and also in view of the fact that all other salesmen in Markfed had been granted the designation of Field Officers I am of the opinion that the trial court did not commit any error in directing the defendants to pass a speaking order on the claim of the plaintiff. There is another aspect of the matter as well. Independent of the claim of designation as Field Officer the plaintiff had also claimed scale of Rs.1200-2100 as a salesman on the ground that he was drawing the said scale prior to his absorption in Markfed and his pay had to be protected. The lower appellate court has observed that the plaintiff was not drawing the scale as alleged by him. The observations of the lower appellate court in this regard are as hereunder :-

> *"Moreover, even plaintiff was not drawing scale of Rs.1200-2100 as alleged by him at the time when the District Whole Sales Co-operative Society Limited, Ferozepur was merged with the Markfed because District Whole Sales Co-operative Society Limited, Ferozepur was merged*

with the Markfed vide letter dated 17.3.1992 as is mentioned in letter dated 28.6.1993 Ex.P1 and plaintiff was granted scale of Rs.1200-2100 vide resolution dated 2.4.1992 Ex.PW4/A, and it was the reason that pay of the plaintiff was protected in the scale of Rs.950-1800 because he was drawing this salary when he was actually taken over by the Markfed on his request."

As against this the trial court found that by a resolution dated 2.4.1992 the plaintiff was granted the scale of Rs.1200-2100. The relevant observations of the trial court are as hereunder :-

"He stated that he was working as Accountant in the District Wholesales Co-operative Supply and Marketing Society Ltd. Ferozepur in the year 1992, which merged with the Markfed and since then he is working as Accountant in the Markfed. That on 2.4.1992 a resolution was passed by the said society which is in his hand and a copy of the said resolution is Ex.PW4/A, which is entered at page No.98/99 of the original resolution book. That this resolution was duly signed by President Gurbak Singh, Vice President Chamkaur Singh, Senior Vice President Surat Singh, Inspector Co-operative Societies (RD) Sukhdev Singh and Director Bahadur Singh. That as per this resolution Suresh Kumar who was

working as Salesman was given the scale of Rs.1200-2100 w.e.f. 1.1.1992, equivalent to Senior Clerk working under the Punjab Government."

Therefore the question of grant of scale of Rs.1200-2100 would also have to be considered by the respondent-Markfed.

I am therefore of the opinion that the trial court had rightly directed the respondent-Markfed to consider the claim of the petitioner by passing a speaking order on the representation filed by him.

In so far as question of delay in filing the suit is concerned, I am of the opinion that since the plaintiff is claiming revised pay scale which would effect the salary payable every month, it is recurring cause of action. In case the respondent-Markfed finds some strength in the claim set up by the plaintiff in his representation then the arrears payable to the plaintiff can be restricted to a period of 38 months prior to the date when he filed the representation seeking the said relief.

For the reasons aforementioned the judgment of the lower appellate court is set aside and that of the trial court is restored. This is however subject to the condition that in case plaintiff is found entitled to any relief of arrears of pay the same shall be restricted to a period of 38 months prior to the date of filing the representation dated 20.10.1999 (Ex.P-1) by the plaintiff.

October 09, 2006 (P.S.Patwalia)
monika Judge